

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AMERICAN AIRLINES, INC., ET AL. :
Plaintiffs, :
: 07 Civ. 7051 (AKH)
-against- :
: This motion relates to
FEDERAL BUREAU OF INVESTIGATION, :
ET AL. : 21 MC 101 (AKH)
: :
: Defendants, :
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DECLARATION OF DESMOND T. BARRY, JR.

I, DESMOND T. BARRY, JR., hereby declare as follows:

1. I am admitted to practice before this Court and a member of the law firm of Condon & Forsyth LLP, co-counsel defendants for American Airlines, Inc. and AMR Corporation. I also serve as Liaison Co-Counsel for the defendants Aviation Parties in these actions.
2. I submit this declaration, pursuant to 28 U.S.C. § 1746, in support of the Aviation Parties' Motion for Summary Judgment Setting Aside the Federal Bureau of Investigation's Refusal to Allow the Depositions of Certain Witnesses.
3. By my letter dated March 6, 2007, together with five supporting affidavits, the Aviation Parties sought authorization from the Federal Bureau of Investigation ("FBI") to depose five current and former employees of the FBI in the September 11 Litigation pursuant to the agency's so-called *Touhy* regulations, 28 C.F.R. §§ 16.21, *et seq.* The Aviation Parties made this request to the Office of the United States Attorney

for the Southern District of New York, by prior agreement with that office. The United States Attorney for the Southern District of New York denied the Aviation Parties' request in five separate letters dated May 7, 2007.

4. In support of this Motion, I attach the following exhibits:

| <u>No</u> | <u>Exhibit</u> |
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| 1. | Letter from Desmond T. Barry, Jr. to Beth E. Goldman, dated March 6, 2007. |
| 2. | Affidavit of Desmond T. Barry, Jr. in support of request to depose Harry Samit, dated March 6, 2007. |
| 3. | Affidavit of Desmond T. Barry, Jr. in support of request to depose Coleen Rowley, dated March 6, 2007. |
| 4. | Affidavit of Desmond T. Barry, Jr. in support of request to depose Scott Billings, dated March 6, 2007. |
| 5. | Affidavit of Desmond T. Barry, Jr. in support of request to depose Michael Rolince, dated March 6, 2007. |
| 6. | Affidavit of Desmond T. Barry, Jr. in support of request to depose Eric Rigler, dated March 6, 2007. |
| 7. | Letter from Michael J. Garcia to Desmond T. Barry, Jr., dated May 7, 2007 refusing authorization to depose Harry Samit. |
| 8. | Letter from Michael J. Garcia to Desmond T. Barry, Jr., dated May 7, 2007 refusing authorization to depose Coleen Rowley. |
| 9. | Letter from Michael J. Garcia to Desmond T. Barry, Jr., dated May 7, 2007 refusing authorization to depose Scott Billings. |
| 10. | Letter from Michael J. Garcia to Desmond T. Barry, Jr., dated May 7, 2007 refusing authorization to depose Michael Rolince. |
| 11. | Letter from Michael J. Garcia to Desmond T. Barry, Jr., dated May 7, 2007 refusing authorization to depose Erik Rigler. |

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| 12. | Substitution for the Testimony of Khalid Sheikh Mohammed, which was admitted into evidence as Defendant's Exhibit 941 in <i>U.S. v. Moussaoui</i> , Cr. No. 01-445A (E.D.Va.). |
| 13. | Testimony of Michael Rolince in <i>U.S. v. Moussaoui</i> , Crim. No. 01-455A (LMB) (E.D.Va.). |
| 14. | Testimony of Harry Samit in <i>U.S. v. Moussaoui</i> , Crim. No. 01-455A (LMB) (E.D.Va.). |
| 15. | Email from Harry Samit to W. Jay Abbott, dated August 15, 2001, which was admitted into evidence as Defendant's Exhibit 326 in <i>U.S. v. Moussaoui</i> , Cr. No. 01-445A (E.D.Va.). |
| 16. | Electronic Communication from Harry Samit to FBI's Counterterrorism Division and ITOS, dated August 18, 2001, which was admitted into evidence as Defendant's Exhibit 472 in <i>U.S. v. Moussaoui</i> , Cr. No. 01-445A (E.D.Va.). |
| 17. | Email chain between Coleen Rowley, Harry Samit and Homer Pointer, dated August 22, 2001, which was admitted into evidence as Defendant's Exhibit 56 in <i>U.S. v. Moussaoui</i> , Cr. No. 01-445A (E.D.Va.). |
| 18. | Testimony of Scott Billings in <i>U.S. v. Moussaoui</i> , Cr. No. 01-455A (E.D.Va.). |
| 19. | <i>U.S. v. Moussaoui</i> , Cr. No. 01-455A (E.D.Va.) Special Verdict Form, filed on April 3, 2006. |
| 20. | Testimony of Eric T. Rigler in <i>U.S. v. Moussaoui</i> , Cr. No. 01-455A (E.D.Va.). |
| 21. | Open Letter to FBI Director Robert Mueller from Coleen Rowley, dated May 21, 2002. |
| 22. | Time Magazine, <i>Coleen Rowley's Memo to FBI Director Robert Mueller</i> . |
| 23. | Letter from Sarah Norman to Hon. Alvin K. Hellerstein, dated March 14, 2008. |
| 24. | <i>U.S. v. Moussaoui</i> , Crim. No. 01-455A (LMB) (E.D.Va.), Judgment in a Criminal Case, filed on May 4, 2006. |
| 25. | BBC News, 'Supermax' prison awaits Moussaoui, May 4, 2006 |
| 26. | Plaintiffs' Memorandum in Support of Motion for Access to Certain Portions of the Record, dated March 30, 2006, <i>U.S. v. Moussaoui</i> , Cr. No. 01-455A |

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| | (E.D.Va.) |
| 27. | Excerpt of Deposition Testimony of Robert J. Cammaroto. |
| 28. | Excerpt of testimony of Robert J. Cammaroto in <i>U.S. v. Moussaoui</i> , Cr. No. 01-445A (E.D.Va.). |
| 29. | Slide presentation prepared by Pat McDonell, Director of the Office of Civil Aviation Security Intelligence of the Federal Aviation Administration. |
| 30. | Warrant application prepared by Harry Samit, dated August 24, 2001, which was admitted into evidence as Defendant's Exhibit 330 in <i>U.S. v. Moussaoui</i> , Cr. No. 01-445A (E.D.Va.). |
| 31. | Excerpts of testimony of Margaret Chevrette in <i>U.S. v. Moussaoui</i> , Cr. No. 01-445A (E.D.Va.). |
| 32. | Substitute Testimony for "John," which was admitted into evidence as Defendant's Exhibit 939 in <i>U.S. v. Moussaoui</i> , Cr. No. 01-445A (E.D.Va.). |
| 33. | Substitute Testimony for "Mary," which was admitted into evidence as Defendant's Exhibit 940 in <i>U.S. v. Moussaoui</i> , Cr. No. 01-445A (E.D.Va.). |
| 34. | Excerpt of Deposition Testimony of Larry Wansley. |
| 35. | Security Directive 108-01-01, August 21, 2001 (AAL011805 – AAL011807). |
| 36. | Excerpt of Plaintiffs' Response to Aviation Defendants' Second Set of Interrogatories to Wrongful Death/Personal Injury Plaintiffs. |
| 37. | Excerpt of Deposition Testimony of Hermie Miller. |

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 28, 2008
 New York, New York

Desmond T. Barry, Jr.